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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/671,920 | 09/25/2003 | Charles Dimitry Zayat | | 3870 |

39016 7590 06/14/2006

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EXAMINER

GATES, ERIC ANDREW

ART UNIT

PAPER NUMBER

3722

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/671,920 | Applicant(s) ZAYAT ET AL. | |
| | Examiner Eric A. Gates | Art Unit 3722 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 May 2006 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarantitis (U.S. Patent 6,491,575).

4. Regarding claim 10, Sarantitis discloses a rotary tool for resurfacing two surfaces simultaneously, said surfaces including a generally flat major surface 20 and an adjacent overlying minor surface 42 perpendicularly oriented (see column 4, lines 5-17) with respect to said major surface, said tool comprising: a motor driven shaft 15; a support plate 29 fixedly mounted to said tool through which said shaft passes; a rotating

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blade holder 16 fixedly attached to said shaft 15, said holder 16 carrying blades 18 which simultaneously engage said major and minor surfaces (see column 4, lines 11-15); a rigid guard housing 10/30 partially enclosing said holder through which said shaft passes, said housing 10/30 located intermediate said plate 29 and holder 16; and means 26 for moving said housing with respect to said major and minor surfaces while said holder remains fixed to thereby effect adjustment of the depth of cut of said tool relative to said surfaces, said means for adjusting the depth of cut to the major surface comprising a first adjustment screw 26 that moves said housing toward and away from said support plate.

5. Regarding claim 13, Sarantitis discloses wherein said housing has two openings (see figure 5), a first opening (on bottom of tool housing) through which the blades extend to engage said major surface and said second opening (on front of tool housing) through which said blades extend to engage said minor surface, and wherein the means for adjusting 38 the depth of cut to said minor surface is a single second adjusting screw 38 operating to move one side of the housing toward and away from said minor surface.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 11, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarantitis in view of Erkfritz (U.S. Patent 3,354,526).

8. Regarding claims 11 and 15, Sarantitis discloses the invention substantially as claimed, except Sarantitis does not distinctly disclose wherein said blades have a triangular shape and are mounted in said holder to have the tips of said triangle engage said major surface and the sides of the triangle engage said minor surface.

Erkfritz teaches the use of blades 30 that are triangular wherein the tips engage a major surface and the sides of the triangle engage a minor surface (see figure 1) for the purpose of engaging two adjacent edge surfaces simultaneously. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined the tool of Sarantitis with the blades of Erkfritz in order to have blades with an alternative shape.

9. Regarding claim 12, the modified invention of Sarantitis discloses the invention substantially as claimed, except Sarantitis does not disclose that the number of blades is limited to two. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used two blades instead of three for the purpose of design choice, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarantitis in view of Zayat '957.

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11. Regarding claim 14, Sarantitis discloses wherein said second adjusting screw 38 extends externally of said housing near an edge of the housing. Sarantitis does not disclose that the second adjusting screw rides on said minor surface during operation of the tool.

Zayat '957 teaches the use of an adjusting screw 78 that rides on the minor surface during operation of the tool for the purpose of providing a direct means for controlling the minor surface cut depth. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined the tool of Sarantitis with the adjusting screw location of Erkfritz in order to an alternative, more easily adjustable means of controlling the minor surface cut depth.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric A. Gates whose telephone number is 571-272-5498. The examiner can normally be reached on Monday-Thursday 7:45-6:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



EAG
8 June 2006



MONICA CARTER
SUPERVISORY PATENT EXAMINER